



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: Planning, Preservation & Zoning (PPZ) Staff
SUBJECT: 21 Eastman Rd., P&Z 2021-121
POSTED: January 28, 2022

RECOMMENDATION: Steep Slope Special Permit: Conditional Approval
Hardship Variances: Deny

This supplemental memo replaces previous PPZ Staff Memos dated December 15, 2021, and January 14, 2022.

ANALYSIS

At their meeting on January 19, 2021, the ZBA requested that Staff prepare an additional memo providing further assessment of the changes to the Applicant's proposal. Specifically, the ZBA was interested in further analysis regarding the remaining variances the Applicant requests. This additional analysis on the remaining variance requests appears below.

Hardship Variances

The following 9 variances are still requested:

- dwelling units not stacked vertically (building type) (1)
- number of stories (1)
- story height (1)
- building width (1)
- ground story elevation (1)
- upper story fenestration (1)
- parking within the parking setback (1)
- habitable space depth (2)

The Applicant has the ability to eliminate four (4) of these nine (9) variances by making slight design changes. Staff addresses these design choices in the discussion on "upper story fenestration," "parking within the parking setback," and "habitable space depth."

Variances may be granted when there is a true hardship, topographical or otherwise. An Applicant cannot be the author of their own hardship. Variances should not be granted simply because an Applicant wants a particular design or amenity and the implementation of such will create a nonconformity and, therefore, the need for a variance. Such a variance would not be the result of a "hardship," it would be the result of a design choice.

A number of the design choices that are currently proposed are not the result of a topographical hardship or the uniqueness of the lot, but due to the Applicant wanting to provide indoor parking, an amenity that is not required. Ultimately, the proposal of this amenity creates unnecessary zoning violations. Staff discussed how to eliminate some of these variances with the Applicant's attorney after the January 19, 2022, ZBA hearing.

Dwelling units not stacked vertically (building type) (1)

Units within a Detached House must be stacked vertically one over the other, and are not permitted to be side-by-side. The dwelling units in this building are side-by-side, which requires a Hardship Variance.

Number of stories (1) and story height (1)

A detached building in the NR zone is allowed a maximum of 2.5 stories and each story may have a story height of 10 feet to 12 feet. Anything above or below that story height range requires additional variances.

The Applicant has proposed a 4-story building, which requires a Hardship Variance. In addition, one of the proposed stories exceeds the maximum permitted story height.

Building Width (1)

The maximum building width for a Detached House is 28 feet. The maximum proposed width of the building is 66.2 feet when measured parallel to the primary front (east-facing) façade.¹

Ground Story Elevation (1)

The SZO states that ground story elevation is measured as the vertical distance from the average finished ground level at the facade(s) to the top of the finished floor of the ground story. The minimum required ground story elevation for a detached house is 2 feet. The Applicant proposes only 0.67 feet.

The following three variance requests could be removed by redesigning aspects of the proposal.

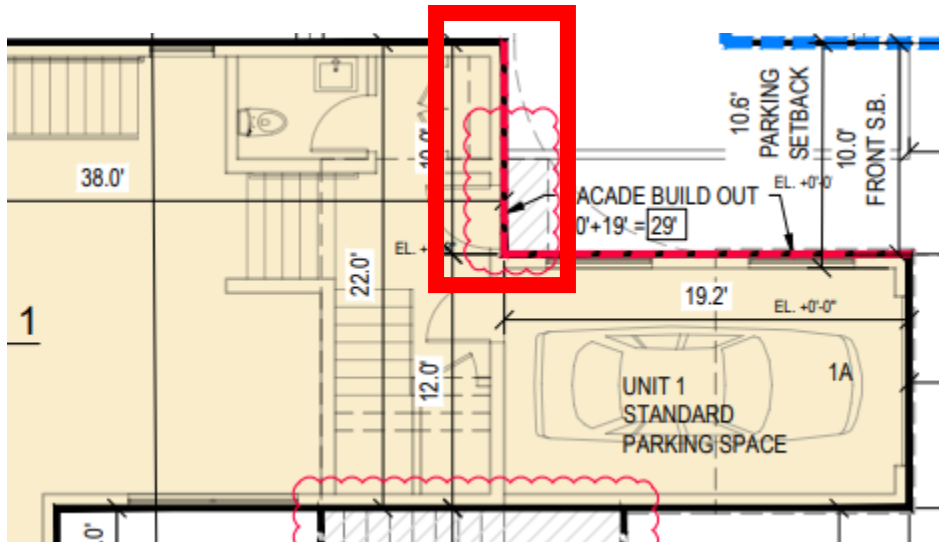
Upper Story Fenestration (1)

The upper story of the primary (east-facing) façade has no fenestration, but is required to have a minimum of 15% fenestration. Staff have annotated two images (in plan and in elevation) to indicate the area in question.

¹ When a building has two front lot lines, one must be designated as the primary front lot line with the façade facing it being the primary front façade. All other facades and lot lines are secondary. It is up to the property owner to designate which front lot line is the primary front lot line. While the Applicant has not explicitly done so in this case, their design choices heavily imply that they have designated the east-facing lot line (and façade) as the primary front, and the north-facing lot line (and façade) as the secondary front. Staff's analysis throughout this memo is based on that understanding.

This could be easily remedied and the variance request nullified by providing fenestration in the area outline in red in the following images.

Sheet Z-2 of the January 21, 2022 plan set, area in question outline in red:



PDF page 36 of the January 21, 2022 plan set, area in question outlined in red:



Parking within the parking setback (1)

Parking is not allowed within 20 feet of the front lot line. The proposed parking space in the garage of the front dwelling unit (Unit 1) is located within this 20-foot no parking zone. This variance could be eliminated by shifting the garage further into the lot or by converting that garage into interior space and allowing the car to park opposite Unit 2

Habitable space depth (2)

For ground level dwelling units, the habitable space depth space must measure at least 20 feet from the façade toward the interior of the building. Storage areas and halls are

not considered habitable spaces. As the first ~20 feet of each of the proposed dwelling units building are taken up by storage areas and/or halls, the proposal does not meet the habitable space depth requirement.

The solution below would eliminate the need for the above three variances (minimum fenestration, parking within the parking setback, and habitable space depth). After the January 19, 2022, ZBA meeting, Staff suggested the following changes to the Applicant's attorney for discussion with his client:

The Applicant could convert the proposed garage spaces into interior living space. This would eliminate two habitable space variances. Two parking spaces could be created at the end of the driveway in front of Unit 2. There is sufficient space for two side-by-side standard parking spaces. Vehicles could back out directly onto Eastman Road *or* could use the open space between the two dwelling units to turn around. This would eliminate the need for the variance for *parking within the parking setback*. Trees such as arborvitae, juniper, laurel or similar could be planted between the proposed fence and car parking to block views of vehicles from the neighbors.

In the above analysis, Staff has provided the Applicant with the ability to eliminate four (4) additional variances from their proposal, reducing the overall number of variances from 9 to 5.

Staff do not have any changes to their recommendation or to the recommended conditions found in the December 15 memo.

Steep Slope Special Permit

The site at 21 Eastman Road begins flat and then slopes downward toward Cedar Avenue and Cedar Street. This results in a ~30-35-foot change in elevation from the front of the lot to the back.

The Zoning Ordinance defines a steep slope as "any change in elevation of twenty-five percent (25%) or greater over a horizontal distance of thirty (30) feet or greater." The Zoning Ordinance intends for discretion to be used in the permitting of development on steep slopes to minimize stormwater run-off and soil erosion, maintain the natural topography and drainage patterns of land, and help protect real property at the base of a steep slope from damage caused by erosion, mudslides, rockslides, falling trees, and other harms.

In May of 2020, after the adoption of the new Somerville Zoning Ordinance (SZO), the City also passed a comprehensive stormwater, sewers, & erosion control ordinance that began requiring a new Site Construction Permit for all construction, clearing, grading, paving, or excavation that could potentially increase runoff or introduce pollutants to the city's storm drainage system.

The City Engineer's rules for approving a Site Construction Permit establish stormwater management standards for final site conditions to minimize adverse impacts and requires the stormwater management controls necessary for development to comply with all local, state, and federal laws.

The Site Construction Permit approval process, the purview of the Engineering Department, will review and address stormwater run-off, soil erosion, and drainage concerns for the site, if the applicant is otherwise granted the Steep Slope Special Permit.

CONSIDERATIONS & FINDINGS

The Zoning Board of Appeals is required by the Somerville Zoning Ordinance to deliberate each of the following considerations at the public hearing. The Board must discuss and draw conclusions for each consideration but may make additional findings beyond this minimum statutory requirement.

Special Permit Considerations

Information relative to the required considerations is provided below:

1. The comprehensive plan and existing policy plans and standards established by the City.

The proposal would provide two market-rate units which partially contributes toward achieving the following goal(s) from SomerVision 2040, the comprehensive plan of the City of Somerville:

- Significantly increase housing stock to keep up with demand while pursuing the goals of increasing the proportion of affordable housing and housing stock diversity.

2. The intent of the zoning district where the property is located.

The intent of the NR zoning district is, in part, "[t]o conserve already established areas of detached and semi-detached residential buildings." If a more conforming project is proposed with one conforming detached or semi-detached principal building on the lot, then such a proposal may help to meet the intent of the zoning district.

3. Consistency of site disturbance with the intent and purpose of Section 10.10 Steep Slopes:

- a. To minimize storm water runoff and soil erosion problems incurred by the grading of steep slopes.*
- b. To maintain the natural topography and drainage patterns of land.*
- c. To help protect real property at the base of a steep slope from damage caused by erosion, mudslides, rockslides, falling trees, and other harms.*

As with any construction project, there will be some degree of site disturbance. However, due to the choice to construct nearly 5,000 square feet of living area in addition to parking spaces, driveways, and stairs running downslope between the two proposed buildings, the proposed development project on 21 Eastman Road would result in more site disturbance than is typical for a one- or two- unit project.

Though there are some older and smaller retaining walls on site, the natural topography of the site will not be maintained due to the construction of retaining walls ranging from 12' – 20' in height, particularly along the rear of the property. The drainage patterns will also be altered due to the proposed retaining walls, construction of nearly 5,000 square feet of living area, and the construction of a staircase that runs between the two proposed buildings. Many trees were already removed from the site prior to the adoption of the Tree Ordinance as part of site preparation.

The site will further be disturbed through significant grading and by bringing in large amounts of fill in order to create the conditions necessary to construct the proposed buildings.

4. Geo-technical, structural engineering, and arboreal best practices for successfully and safely stabilizing steep slopes.

Significant geotechnical, structural engineering, and arboreal techniques will be needed in order to mitigate the impacts of the site disturbances. In addition to the large retaining wall along at the rear of the property, the proposed buildings themselves will partly function as their own retaining walls, eliminating the need for additional large retaining walls to be built on the property.

The existing reports (including geotechnical, stormwater/drainage, erosion control, recon retaining wall calculations) were generated in 2018 and 2019, and do not reference the currently proposed buildings or site design).

The Board may find it valuable to request additional information from the Applicant during the public hearing regarding the extent to which best practices will be utilized during and after construction.

Hardship Variances

In accordance with the Somerville Zoning Ordinance (SZO), the ZBA may grant a Hardship Variance only upon deliberating and finding all of the following at the public hearing for each requested variance:

Hardship Variance Considerations

1. Special circumstances exist relating to the soil conditions, shape, or topography of a parcel of land or the unusual character of an existing structure but not affecting generally the NR district;

2. Literal enforcement of the provision of this Ordinance for the NR district would involve substantial hardship, financial or otherwise, to the petitioner due to said special circumstances; and
3. Desirable relief could be granted without causing substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the NR district or the Ordinance in general.

PERMIT CONDITIONS

Should the Board approve the Steep Slope Special Permit and/or Hardship Variances, PPZ Staff recommends the following conditions:

Validity

- This Decision shall be recorded with the Middlesex County Registry of Deeds.

Public Record

- A copy of the Recorded Decision stamped by the Middlesex South Registry of Deeds shall be submitted for the public record.
- Physical copies of all submittal materials as permitted by the Review Boards shall be submitted for the public record in accordance with the document format standards of the ISD/PB/ZBA Submittal Requirements.